

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

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| <b>Empire Company, Inc.;</b>                              |
| <b>Luis Ayala Colón &amp; Sucrs. Inc.;</b>                |
| <b>Island Stevedoring, Inc.;</b>                          |
| <b>International Shipping Agency d/b/a<br/>Intership;</b> |
| <b>Trailer Bridge, Inc.</b>                               |

**Cases: 12-RC-152219  
12-RC-152179  
12-RC-152145  
12-RC-152203  
12-RC-152221**

**REQUEST FOR REVIEW OF ORDER  
TO THE NATIONAL RELATIONS BOARD:**

COMES NOW, petitioner, Unión Independiente de Empleados de Muelles de Puerto Rico y el Caribe, Inc., through the undersigned attorneys, and respectfully, allege, and request the following:

1. On May 29, 2015 the Board notified Petitioner an order to block petition for elections in the cases Luis Ayala Colón & Sucrs. Inc., 12-RC-152179, and International Shipping Agency d/b/a Intership 12-RC-152219.
2. Board's decision was made due to pending complaints against International Shipping Agency d/b/a Intership, in cases 12-CA-133042, 12-CA-135453, 12-CA-135704, 12-CA-136480, 12-CA-142493, 12-CA-143597, 12-CA-144073; and against Luis Ayala-Colon & Sucrs. Inc.,

in Case 12-CA-138147. Board ordered that further processing of the above referenced representation cases is blocked pending final disposition of the alleged unfair labor practice charges.

3. According to the Board, this decision was made pursuant to Section 11730.3 (b) of the agency's Casehandling Manual and after receiving a written request from Local 1901, ILA, AFL-CIO also known as Union de Empleados de Muelles (UDEM), Local 1901, AFL-CIO to block these petitions.

4. According to the Board, they "maintain a policy of holding in abeyance any representation case(s) where pending unfair labor practice charges are filed by a party to a representation case, and such charges allege conduct of a nature which has an effect on the bargaining relationship and thus conditions or precludes the existence of a question concerning representation raised by the petition."

5. Under Section 102.71 (b) and (c) of the Board's Rules and Regulations, Petitioner is requesting a review of this action with the Board offices in Washington, D.C.

6. Under Rule 102.71 (a) a review of an action of a Regional Director pursuant to this subsection may be granted only upon one or more of the following grounds:

- a. That a substantial question of law or policy is raised because of
  - (i) the absence of, or (ii) a departure from, officially reported Board precedent.
- b. There are compelling reasons for reconsideration of an important Board rule or policy.
- c. The Regional Director's action is, on its face, arbitrary or capricious

7. The blocking of the processing is ruled by, Section 103.20 of the National Labor Relations Board, Rules and Regulations, as amended, which states the following:

“Whenever any party to a representation proceeding files an unfair labor practice charge together with a request that it block the processing of the petition to an election, or whenever any party to a representation proceeding requests that its previously filed unfair labor practice charge block the further processing of a petition, the party shall simultaneously file, but not serve on any other party, a written offer of proof in support of the charge. The offer of proof shall provide the names of the witnesses who will testify in support

of the charges and a summary of each witness's anticipated testimony. The party seeking to block the processing of a petition shall also promptly make available to the regional director the witnesses identified in its offer of proof. If the regional director determines that the party's offer of proof does not describe evidence that, if proven, would interfere with employee free choice in an election or would be inherently inconsistent with the petition itself, and thus would require that the processing of the petition be held in abeyance absent special circumstances, the regional director shall continue to process the petition and conduct the election where appropriate."

8. Although incumbent union did not comply with Section 103.20, because it failed to provide an offer of proof, the Board ordered the blocking of the petitions on these cases.

9. The pending complaints against International Shipping Agency d/b/a Intership, in cases 12-CA-133042, 12-CA-135453, 12-CA-135704, 12-CA-136480, 12-CA-142493, 12-CA-143597, 12-CA-144073 and against Luis Ayala-Colon & Sucrs. Inc., in Case 12-CA-138147, is dated from 2014 and even 2012.

10. For example, in *General Counsel's Motion to Consolidate Cases* in the cases 24-CA-091723, 12-CA-104185 and 12-CA-129486, of June 2, 2015 stated the following:

“With respect to common supervisors and agents involved in both set of cases, Luis Ruiz, General Manager of Respondent MTS, and Enrique Sosa, General Manager of Respondent TTS, at the time of the unfair labor practices in Cases 24-CA-091723 et al. in 2012, who are alleged to have made various unlawful statements at that time (paragraphs 10 to 12 of the Consolidated Complaint issued in Cases 24-CA-091723 and 24-CA-104185 on July 31, 2013, attached as Exhibit 2), are alleged as supervisors of Internship in Cases 12-CA-133402 (Exhibit 1 at paragraph 4), and Sosa is alleged to have engaged in unlawful conduct on behalf of Respondent Internship in July 2014.”

11. Also, General Counsel, on the above mentioned motion stated the following:

“Although many of the alleged unfair labor practices in the above-captioned matter occurred in 2012, Respondent alleged unlawful suspension of employee Efrain Gonzalez because of his union activities occurred on May 30, 2014, less than two months before the series of alleged unfair labor practices in the Cases 12-CA-133402 commenced on July 17, 2014, and involve the same bargaining unit.”

12. According to *Second order further consolidating cases, further consolidated complaint and notice of hearing*, of April 30, 2015, of cases 12-CA-133042, 12-CA-135453, 12-CA-135704, 12-CA-136480, 12-CA-142493, 12-CA-143597, and 12-CA-144073, the Board states the following:

“The charge in Case 12-CA-133042 was filed by the Union on July 18, 2014. The original charge in Case 12-CA-135453 was filed by the Union on August 26, 2014 and the amended charge on November 4, 2014. The original charge in Case 12-CA-135704 was filed by the Union on August 28, 2014 and the amended charge was filed on December 17, 2014. The charge in Case 12-CA-136480 was filed on September 10, 2014. The original charge in Case 12-CA-142493 was filed on December 9, 2014 and the amended charge on February 19, 2015, with the second amended charge on April 17, 2015. The original charge in Case 12-CA-143597 was filed on December 29, 2014, and the amended charge on February 19, 2015, and the second amended charge on March 31, 2015. The charge in Case 12-CA-144073 was filed on January 8, 2015.”

13. Based on this order the allegations are related to the dates of July 17, 2014 through July 21, 2014. There are other allegations of July 24, 2014 and other allegations are from December 1, 2014 and January 2015, which are related to wages, hours, and other terms of conditions of employment of the Unit and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

14. According to *Order Consolidating Cases, Consolidated Complaint and Notice of Hearing*, of July 31, 2013 in the cases 24-CA-091723 and 24-CA-104185:

“The charge in Case 24-CA-091723 was filed on October 19, 2012, and the first amended charge was filed on November 13, 2012. The second amended charge was filed on December 3, 2012, the third amended charge on April 15, 2013, and the fourth amended charge on May 17, 2013. The charge in Case 24-CA-104185 was filed on May 2, 2013, and the first amended charge was filed on June 28, 2013.”

15. According to *Complaint and Notice of Hearing*, of August 29, 2014, from Case 12-CA-129486 the charge in this proceeding was filed on June 2, 2014 and the allegations are related from event which occurred on May, 2014.

16. We do not know for certain when these cases will have a resolution, and therefore, it will be affecting a representation case of a new union, which has nothing to do with the charges.

17. Also the charges are related from dates where this new union (Petitioner) did not exist.

18. The blocking of the petitions affects the Unión Independiente de Empleados de Muelles de Puerto Rico y el Caribe, Inc on their right under Section 7 of the National Labor Relations Act, and as a consequence it will be impossible to guarantee the laboratory conditions for a prolonged and undetermined if the order blocking the petitions for election prevail.

19. The Board has a responsibility to guarantee the laboratory conditions, therefore the petitions for elections at those two employees should be held.

WHEREFORE, Petitioner respectfully requests to the Board to order the continuation of these representation cases.

CERTIFICATE OF SERVICE: I certify that I have notified copy of this brief to the legal representatives of the parties on record to:

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RESPECTFULLY SUBMITTED, In San Juan, Puerto Rico, this 12<sup>th</sup> day of  
June, 2015.

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